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No. 85-1834

# In The
# Supreme Court Of The United States

OCTOBER TERM, 1985

MEYER BILLER,
*Petitioner,*

v.

STATE OF CONNECTICUT,
*Respondent.*

## BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF CONNECTICUT

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## QUESTIONS PRESENTED

1. SHOULD THIS COURT REVIEW CONSTITUTIONAL CLAIMS, NOT RAISED AT TRIAL, REGARDING THE PETITIONER'S PRIOR CONVICTIONS, WHERE THE STATE DID NOT OFFER THE CONVICTIONS AT TRIAL, THE SENTENCING COURT TOOK INTO ACCOUNT THAT THE CONVICTIONS WERE ON APPEAL, AND THE STATE APPELLATE COURT RESOLVED THE CLAIMS ON STATE PROCEDURAL DEFAULT GROUNDS?

2. SHOULD THIS COURT REVIEW AN EVIDENTIARY SUPPRESSION CLAIM, WHERE THE STATE APPELLATE COURT RESOLVED THE CLAIM ON STATE PROCEDURAL DEFAULT GROUNDS, THE CLAIM IS FACTUALLY COMPLEX AND OF LITTLE PRECEDENTIAL VALUE, AND THE SUCCESS OF THE PROSECUTION DID NOT DEPEND ON ADMISSION OF THE EVIDENCE?

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## RULES INVOLVED

### Rule 17.1, Revised Rules of the Supreme Court of the United States

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons thereof. The following, while neither controlling nor fully measuring the Court's discretion indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial

proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court.

## Connecticut Practice Book § 3063

The supreme court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The supreme court may in the interest of justice notice plain error not brought to the attention of the trial court.

## STATEMENT OF THE CASE

On the afternoon of March 12, 1981, Joseph Toscano, an experienced arson investigator assigned to the New Haven state's attorney's office, responded to the scene of a fire that gutted an abandoned building on Hallock Street in New Haven. Toscano noted that an adjoining house, owned by Wilken Shaw, had suffered exposure damage from the blaze.

Toscano also noticed that the petitioner was standing among the crowd of onlookers; the inspector knew the petitioner from prior arson investigations and was aware that the petitioner's public insurance adjustor's license had been revoked. Toscano watched the petitioner walk over to Wilken Shaw, who

was standing on the street, and begin to talk with him. When the petitioner took out a sheaf of documents, which he spread out on the hood of a parked car, and had Shaw sign them, Toscano and Joseph Howard, another arson inspector, walked over. See Respondent's Appendix at A1.

Toscano was familiar with the documents associated with a fire insurance claim; the inspector saw, in plain view, a document he believed was a public adjustor's employment contract form. Toscano overheard the petitioner assure Shaw's daughter-in-law that the parties had forty-eight hours to cancel the contract; this was the cancellation period for a public adjustor's contract. Id. at A2-A3.

Officer Howard spoke with Wilken Shaw, and asked him: "What did Mr. Biller represent himself as when he spoke to you initially?" Shaw explained that the petitioner had claimed to be a public adjustor, who would manage "all" the dealings between the insured and the insurance company. Id. at A3.

The two inspectors decided they had probable cause to arrest the petitioner for acting as a public adjustor without a license, in violation of Connecticut General Statutes § 38-71. Howard informed the petitioner he was under arrest. As Howard sought to handcuff him, the petitioner curled himself up into a ball, and grabbed at the officer's hand.

Howard also asked the petitioner to give him the papers that the officers had seen. The petitioner refused to surrender them, and a struggle for possession of the papers, which the petitioner had thrust into a trouser pocket, ensued. The petitioner again curled up, with his hands clasped over his pocket. With difficulty, the inspectors managed to lead the petitioner away from the fire scene to a police car. Only there were the officers able to seize the "wad" of documents. As a result of this incident, the petitioner was eventually also charged with interfering with an officer, Connecticut General Statutes § 53a-167a.

Prior to trial, the petitioner filed, inter alia, a motion to dismiss under the doctrine of State v. Licari,[1] 153 Conn. 127, 214 A.2d 900 (1965), and an omnibus motion to suppress evidence. See Petitioner's Appendix at 58-60. Prior to the evidentiary hearing on the motion to dismiss, the petitioner stated merely that the suppression motion "would be incorporated within the motion to dismiss." At the hearing, the petitioner made no argument regarding suppression of evidence. The trial court found ample evidence tending to

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[1] Licari, purportedly based on federal authorities, held that where an arrest lacked probable cause, the superior court had no personal jurisdiction over the defendant. See 153 Conn. at 132-34. The Connecticut Supreme Court overruled Licari in State v. Fleming, 198 Conn. 255, 258-263, 502 A.2d 886 (1986), after the trial in this case.

establish probable cause, and denied the motions.

The petitioner also filed a motion in limine to exclude evidence of his prior felony convictions for falsely certifying oaths, in violation of Connecticut General Statutes § 53-368. The petitioner knew that his convictions were on appeal, and he had already filed a preliminary statement of issues with the Connecticut Supreme Court, asserting that the convictions had been obtained with the use of compelled grand jury testimony.[2] See Petition at 27-28. The petitioner's motion, however, failed to apprise the trial court either of the pending appeal or of the self-incrimina-

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[2] The petitioner was represented by the same law firm in both the then-pending appeal and the instant trial. See Petitioner's Appendix at 4, 15.

tion claim. Petitioner's Appendix at 53-57. During trial, the court was told finally only the fact that the convictions were on appeal. Id. at 10.

The court denied the motion in limine. The petitioner did not testify on his own behalf. The State never offered the prior convictions into evidence.

At the conclusion of deliberations, the jury declared itself deadlocked on the public adjustor count, and a mistrial was declared as to that count. The jury returned a verdict of guilty to the interfering with an officer count.

At sentencing, the prosecutor reminded the trial court that the petitioner's prior convictions were on appeal. The court explicitly acknow-

ledged this in weighing the convictions as a factor at sentencing. The petitioner neither objected to consideration of the convictions nor alerted the court to a self-incrimination problem with them. Respondent's Appendix at A4-A7.

On appeal to the Connecticut Appellate Court, the petitioner presented eight claims of error. The petitioner's first issue was a thorough redaction of his dismissal claim. The petitioner's sole reference to any suppression claim, without citation to authority, came at the end of this argument: "The evidence seized from the petitioner's person during this illegal arrest must also be suppressed." Petitioner's Appendix at 70. The petitioner also argued that denial of his motion in limine to exclude prior

convictions, and consideration of those convictions at sentencing constituted the use of compelled testimony against him.

The State, in its brief, argued that the dismissal claim was meritless. The State also noted that the petitioner had failed to alert the trial court to any constitutional impediment to use of prior convictions, and that both denial of the motion in limine and the limited use made of the convictions at sentencing were not error under state law. Respondent's Appendix at A4-A7.

The petitioner's reply brief failed to either elaborate on, or cite authority for, a suppression claim. The only allusion to suppression was: "The documents taken from the petitioner's pockets (sic) were an integral part of

the State's interfering claim and, if illegally seized, must (sic) suppressed."

The Connecticut Appellate Court affirmed the petitioner's conviction; the court's holding did not mention the constitutional aspects of the petitioner's claim regarding his prior convictions or the suppression of evidence. See State v. Biller, 5 Conn. App. 616, 501 A.2d 1218 (1985).

The petitioner filed a motion to reargue with the Connecticut Appellate Court and then a petition for certification to the Connecticut Supreme Court; both were denied summarily by the state courts. See Petitioner's Appendix at 2, 13; Order denying petition for certification, 199 Conn. 803, ___ A.2d ___ (1986). In opposing the motion and the

petition, the State argued that the petitioner's failure to alert the trial court to a known constitutional defect in his convictions was induced error, a procedural default that rendered the claims unreviewable. Respondent's Appendix at A8-A14. Regarding the suppression issue, the State argued that mere mention of such a claim failed to present the issue to the state courts, and thus constituted another default. Id.

## REASONS FOR DENIAL OF THE PETITION

### I. THE PETITIONER'S FIRST AND SECOND CLAIMS WERE RESOLVED ON ADEQUATE AND INDEPENDENT STATE GROUNDS AND ARE INSUBSTANTIAL ON THE MERITS

#### A. These Claims Were Subject to a State Contemporaneous Objection Rule Which Constitutes An Adequate and Independent Ground Barring Review

In his first and second claims, the petitioner asserts that this Court should grant a writ of certiorari to review the denial of his motion in limine to exclude prior convictions, and the trial court's consideration of these convictions at sentencing. The petitioner reasons that since the convictions were later reversed on self-incrimination grounds, and as the charges were subsequently dismissed on retrial, that the instant conviction was

obtained, and his sentence enhanced, by the use of compelled testimony. The respondent submits that review of these claims is barred by Connecticut's procedural default doctrine.

Although Connecticut law permits appellate review of certain exceptional unpreserved claims; State v. Evans, 165 Conn. 61, 327 A.2d 576 (1973); Practice Book § 3063; review does not ordinarily extend to cases where a party has failed to raise in the trial court the precise objection he raises in the appellate court. Failure to state known grounds for an objection has been condemned as "trial by ambuscade," which deceives both the trial court and the opposing party. State v. Sinclair, 197 Conn. 574, 579, 500 A.2d 539 (1985), and cases cited therein. Application of such a

contemporaneous objection rule constitutes an adequate and independent state ground precluding review by this Court. Michigan v. Long, 103 S. Ct. 3469, 3474 n.4 (1983); Michigan v. Tyler, 436 U.S. 499, 512 n.7 (1978).

The petitioner was aware at the time of trial of a powerful constitutional objection to use of his prior convictions. See Petition at 21-22. The petitioner withheld this crucial information from the trial court. Indeed, the petitioner voiced no objection on any ground to consideration of his prior convictions at sentencing. It was not until the petitioner's appeal that he first mentioned the constitutional aspects of his claim. It may be inferred that the Connecticut Appellate Court applied its contemporaneous

objection rule to the petitioner's newly-raised constitutional claim, for the State raised the petitioner's procedural default in its brief and the court made no mention of the petitioner's constitutional claims, and confined its review solely to those facts regarding the prior convictions that had been communicated to the trial court. See Stepney v. Lopes, 760 F.2d 40, 43-44 (2d Cir. 1985) (State court's decision not to mention claim, coupled with State's argument of procedural default, justifies the conclusion that the court resolved the claim on a procedural default ground). The court's presumed refusal to entertain a claim known to the petitioner at trial, but held back until appeal, constitutes an adequate and independent ground for the

decision.[3] Michigan v. Long, supra; Michigan v. Tyler, supra.

### B. The Claims Are Insubstantial on the Merits

As discussed, supra, the petitioner utterly failed to advise the trial court of a known constitutional objection to any use of his prior convictions, either during the argument on his motion in limine, or at senten-

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[3] This conclusion is strengthened by the similar circumstances surrounding the Connecticut Appellate Court's denial of the petitioner's motion to reargue. Induced error is another variety of procedural default in Connecticut. State v. Ross, 189 Conn. 42, 47, 454 A.2d 266 (1983); State v. Kish, 186 Conn. 757, 769, 443 A.2d 1274 (1982). In view of the fact that the Connecticut Appellate Court denied the petitioner's motion to reargue summarily, and the respondent argued induced error in its opposition papers, this Court can assume that the Connecticut Appellate Court denied the motion on the adequate and independent state ground of induced error. Stepney v. Lopes, supra.

cing. Wholly, aside from the fact that these procedural defaults, as argued, create an adequate, independent state ground for resolution of the issue by the Connecticut Appellate Court, they also reveal that the petitioner in the trial court did not find the constitutional argument he now raises to be all that compelling.

Indeed, the petitioner's claims directed to his prior convictions have only a certain superficial glamour, and no substance. The respondent never actually offered the petitioner's prior convictions into evidence at trial, let alone the compelled grand jury testimony that had contributed to them. And as the petitioner did not testify on his own behalf, the prejudice flowing from denial of his motion in limine remains

elusive. See State v. Harrell, 199 Conn. 255, 263-68, __ A.2d __ (1986) (adopting the rule of Luce v. United States, 105 S. Ct. 460 (1984), albeit prospectively). Nor can the trial court be said to have weighed the convictions particularly heavily at sentencing. Indeed, the court expressly took into account the fact that the convictions were an appeal in evaluating them. And the convictions formed only one of myriad factors gauged by the court in imposing sentence. The petitioner's claims are insubstantial on the merits, and thus form an inadequate basis for the granting of a writ of certiorari.[4]

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[4] The authorities relied upon by the petitioner are readily distinguishable. In those cases, the illegality of the prior convictions only became evident later, after they had been used against the defendants. By contrast, the petitioner here was already aware of the constitutional infirmities afflicting his prior

## II. THE PETITIONER'S THIRD CLAIM WAS SUBJECT TO A STATE PROCEDURAL DEFAULT RULE WHICH CONSTITUTES AN ADEQUATE AND INDEPENDENT GROUND BARRING REVIEW, IS TOO FACT-LADEN FOR THIS COURT TO REVIEW, AND IS INSUBSTANTIAL ON THE MERITS

### A. The Claim Was Subject To A State Procedural Default Rule Which Constitutes An Adequate And Independent Ground Barring Review

The petitioner's third proposed basis for the granting of certiorari rests upon the assertion that the Connecticut Appellate Court's holding permits the State to use evidence seized seized incident to an illegal arrest to

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convictions at the time of his trial. The petitioner had a full opportunity to explain to the trial court the significance of his self-incrimination claim, both at the hearing on his motion in limine, and later at sentencing. The petitioner cannot claim violation of his constitutional rights, merely because he choose not to avail himself of such an opportunity.

convict a defendant of another crime. In fact, this claim cannot survive a fair reading of the Appellate Court's decision; far from authorizing the use of illegally-obtained evidence, the holding is silent on the issue of evidentiary suppression. See Petitioner's Appendix at 3-12.

This Court will decline to review a state court decision that rests upon an adequate and independent state ground. Michigan v. Long, supra; Michigan v. Tyler, supra.

As a matter of Connecticut appellate procedural law, claims of error merely mentioned, but not properly briefed, are deemed abandoned and shall not be reviewed. Rodriguez v. Mallory Battery Co., 188 Conn. 145, 149, 448 A.2d 829 (1982); see also New Haven

Savings Bank v. Valley Investors, 174 Conn. 77, 84, 382 A.2d 321 (1977) (issue party introduced as "an afterthought in a terse statement in his brief" is inappropriate for review). This rule has the salutory purpose of alerting both the reviewing court and the opposing party to those claims the party actually intends to press on appeal.

The instant case demonstrates the wisdom of the Connecticut rule. The petitioner's suppression of evidence claim was no more than a bare statement, devoid of cited authority, appended in his Appellate Court brief to his lengthy dismissal claim. The Connecticut Appellate Court's failure to address the suppression claim strongly suggests that the court regarded it as neither distinctly raised on appeal nor properly

briefed. Such a decision not to entertain the petitioner's suppression claim rests on independent and adequate state grounds which bar review by this court.[5] Michigan v. Long, supra; Michigan v. Tyler, supra.

### B. The Issue of Whether Probable Cause Existed For The Public Adjustor Arrest Is Too Fact-laden For This Court To Review

The petitioner identifies no provision of the Considerations Governing Review on Certiorari that would justify an allocation of this Court's scarce time to consideration of the

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[5] Although here, unlike the case with the petitioner's prior conviction claims, the respondent did not raise the petitioner's procedural default in it's appellate brief, it did not do so because it, like the Connecticut Appellate Court, regarded the issue as not distinctly raised. Cf. Stepney v. Lopes, supra.

correctness of a state trial court judge's finding of probable cause under a state penal statute. See Rule 17.1, Revised Rules of the Supreme Court of the United States. As the petition for certiorari itself reflects; Petition at 33-55; resolution of the question hinges on application of a highly specific state statute to an ideosyncratic and complex factual background, set forth in a full evidentiary hearing and drawing on numerous exhibits. The issue here is so fact-laden as to concern no-one save the immediate parties involved; resolution of the issue would have little or no precedential value for the legal system as a whole.

### C. The Claim Is Insubstantial on the Merits

The petitioner's third claim is premised on the assumption that suppression of the actual documents seized would deprive the prosecution on the interfering with an officer count of an evidentiary basis. The respondent submits that this premise is erroneous.

The record below indicates that two arson inspectors saw, in plain view on a public street, papers, including a document one inspector believed to be a public adjustor's employment contract. The other inspector sought to seize a generic class of objects - "documents" - incident to arrest. Even if the actual papers were suppressible, the officers would in no way be estopped from testifying to what they observed in

plain view; Illinois v. Andreas, 463 U.S. 765 (1983); what they strove to do as a result of those observations, and what the petitioner did to interfere with their duties. The petitioner's claim that the prosecution depended on admissibility of the actual documents is meritless.

## CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari to the Connecticut Supreme Court.

Respectfully submitted.

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## APPENDIX

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## EXCERPTS FROM RESPONDENT'S BRIEF TO THE CONNECTICUT APPELLATE COURT

### I. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO DISMISS []

#### A. Facts Pertaining to the Denial of the Defendant's Motion to Dismiss

. . . .

The defendant walked up to Wilken Shaw, owner of the damaged premises at 79 Hallock Street, spoke with Wilken Shaw and then produced several documents to sign. Willa Shaw, the owner's daughter-in-law, joined the pair and began to question the defendant about the documents. . .her father-in-law had signed. Toscano and Howard walked over to investigate. T. Nov. 9, 1982 at 60-62.

As the officers drew near, Howard overheard the defendant inform the Shaws to the effect "that he would take care of things with the insurance company . . . . " Toscano identified himself, displaying his badge. Howard's badge was pinned to his fireman's "turn out" coat. The defendant became agitated and turned away, saying: "I know who you are." Toscano asked the defendant about the status of his public adjustor's license. T. Nov. 9, 1982 at 25; T. at 51, 60, 62; T. at 33.

Willa Shaw asked the defendant about the legality of the documents and then insisted that he tear them up. The defendant replied that she had forty-eight hours to cancel the contract. Inspector Toscano briefly viewed the documents and believed that one was "a

retainment by a public adjustor." Eventually, Ms. Shaw prevailed on the defendant to tear up some of the contracts. T. Nov. 9, 1982 at 62, 63, 65; T. at 30.

As this was happening, Officer Howard spoke with Wilken Shaw, who told him that the defendant "had purported himself to be a public adjustor and that Mr. Biller would take care of all the dealings between Mr. Shaw and whatever insurance company was involved." Toscano recalled that Howard asked in summary: "What did Mr. Biller represent himself as when he spoke to you initially," and that Shaw responded "that he had represented himself as a public adjustor." T. Nov. 9, 1982 at 31; T. at 63, 72-73, 77.

The officers concluded that, on the basis of their information, the defendant had been "soliciting business from the owners of 79 Hallock Street . . . . . as a public adjustor." Toscano instructed Howard to place the defendant under arrest, for violation of General Statutes § 38-71. T. Nov. 9, 1982, at 33, 34; T. at 39-40.

. . . .

## VI. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION IN LIMINE RE IMPEACHMENT BY PRIOR CONVICTIONS

. . . .

The defendant ignores one signal fact which must not be forgotten in evaluating the merits of his claims, and the counter-claims advanced by the state in the arguments, infra. The record

indicates that the trial court was not informed that the convictions in question were on appeal until November 24, 1982, the date of imposition of sentence.[1] This was twelve days after the motion in limine, was ruled upon, on November 12, 1984. T. at 733-734; November 9, 1982 T. at 11-12.

. . . .

Lastly, prejudicial effect, viewed in light of information possessed by the trial court at the time of the ruling, must be gauged. The defendant is eloquent in his condemnation of the court for failing to consider the merits

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1 The State was mistaken in this contention; the trial court learned the bare fact that the convictions were on appeal in the midst of trial. However, there is no evidence that the court was ever informed of the constitutional claim known to the defendant at the time of trial, but raised for the first time on appeal.

of the constitutional claims advanced in his then pending appeal. Defendant's Brief at 29-35. In so doing, the defendant charges the trial court with prescience, not discretion. As noted supra, the record is bare of any suggestion that the trial court was informed that the prior convictions were on appeal, until the day of sentencing. See T. Nov. 9, 1982 at 11-12; T. at 52-53, 604. The defendant's Motion in Limine: Re Impeachment by Prior Convictions, dated November 12, 1982, claimed only that "similarity between the facts surrounding the earlier case is so marked" as to create undue prejudice.[8]

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[8] Even this claim of prejudice is without merit, as there is no indication that the State would have been permitted to divulge the factual basis of the convictions, had they been introduced. The trial court was scrupulously careful to avoid such contamination. See T. at 53-55. An impeaching conviction limited to the name of the offense and the date of conviction would not

Cert. Ct. File. The defendant failed to inform the trial court that the convictions were on appeal. Having neglected to alert the court to this allegedly crucial consideration, whether by oversight or design, the defendant should not protest that "the interests of justice" mandate reversal for abuse of discretion. See Defendant's Brief at 33-35.

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have betrayed a "similarity between the facts" to the crimes charged here.

## EXCERPTS FROM RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION TO REARGUE

In his motion to reargue, the defendant contends that this Court has neglected to consider the trial court's allegedly erroneous denial of his motion to suppress evidence "of the pieces of paper that were in his pocket . . ." Defendant's Motion to Reargue at 1. The defendant asserts that such a suppression claim was fairly presented "in his brief and reply brief . . ." Id. In fact, examination of the briefs shows that such a claim was barely mentioned in conclusory terms, without citation to authority or the record, as a terse appendage to the defendant's Licari claim. See Defendant's Brief at 12; Defendant's Reply Brief at 3. Mere mention of such a suppression claim

cannot be deemed to have placed the issue distinctly before this Court. See Rodriguez v. Mallory Battery Co., 188 Conn. 145, 149, __ A.2d __ (1982) (Assignments of error merely mentioned but not briefed deemed abandoned).

. . . .

Secondly, the defendant contends that this Court did not address the "constitutional due process and self-incriminating issues" concerning his prior convictions argued in his brief. Defendant's Motion to Reargue at 1-2. As the State pointed out in its brief and at oral argument, these grounds were never presented to the trial court below; there is no evidence on the

record that the trial court was ever apprised of the merits of the defendant's then-pending appeal . . .

## EXCERPTS FROM RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR CERTIFICATION TO THE CONNECTICUT SUPREME COURT

[T]he record reflects that defense counsel never informed the trial court that the convictions were constitutionally defective; indeed, the motion in limine failed to divulge that the convictions were even on appeal.[3] See Record at 28-31. This failure to inform the trial court of essential facts bearing on its ruling suggests "trial by ambuscade," a practice that this court has not been slow to condemn. See State v. Sinclair, 197 Conn. 574, 579, 500 A.2d 539 (1985), and cases cited therein.

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[3] This lapse is especially curious as the defendant now insists that the merits of the appeal were evident on the face of the appeal papers. See Defendant's Petition for Certification at 9.

The defendant protests that this default is excused by State v. Evans, 165 Conn. 61, 70, 327 A.2d 576 (1973) or by the doctrine of plain error, Practice Book § 3063. Defendant's Petition for Certification at 11-12. The short answer is that neither is intended as a device to permit the defendant to plant a bomb in the trial court and only light the fuse on appeal. As the Evans court cautioned: "[I]t is not true that defense counsel in criminal cases may through neglect, inattention or as at trial strategy refrain from...raising in the trial court any available constitutional defenses, confident that if the outcome of the trial proves unsatisfactory without...raising any available constitutional issue they may still prevail by assigning error of raising

the constitutional issue for the first time on appeal." 165 Conn. at 67. Moreover, as this Court held recently: "[E]rror induced by an appellant cannot be a ground for reversal and will not be reviewed. State v. Ross, 189 Conn. 42, 47, 454 A.2d 266 (1983); State v. Kish, 186 Conn. 757, 769, 443 A.2d 1274 (1982)." State v. Silveira, 198 Conn. 454, 467, __ A.2d __ (1986), quoting State v. Hinckley, 198 Conn. 77, 81 n.2, __ A.2d __ (1985).

. . . .

Moreover, the defendant's suppression claim cannot even be said to have been fairly presented to the Appellate Court. Examination of the defendant's briefs shows that such a claim was barely mentioned in conclusory terms,

without citation to authority or the record, as a terse appendage to the defendant's Licari claim. See Defendant's Brief at 12; Defendant's Reply Brief at 3. Mere mention of such a suppression claim cannot be deemed to have placed the issue distinctly before that Court. See Rodriquez v. Mallory Battery Co., 188 Conn. 145, 149, __ A.2d __ (1982) (Assignments of error merely mentioned but not briefed deemed abandoned).